Muhamad Nazri bin Muhamad v JMB Menara Rajawali & Anor

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-02(NCVC)(A)-2057–10 OF 2018
VERNON ONG, SURAYA OTHMAN AND HAS ZANAH MEHAT JJCA
14 OCTOBER 2019

Land Law — Strata title — Maintenance charges — Joint management body ('JMB') of condominium authorised its executive committee ('JMC') to determine different rates for different types of parcels in building for purpose of calculating maintenance charges payable by its owners — JMC fixed higher rate for residential and retail shop parcels and lower rate for car park parcel — Whether actions by both JMB and JMC were ultra vires Strata Management Act 2013 ('the SMA') and null and void — Whether under ss 21 and 25 of the SMA JMB could only fix one common rate for all types of parcels — Whether fixing of different rates would cause inequitable, unfair and discriminatory result — Whether only JMB was authorised under SMA to determine maintenance charge rate — Whether JMB could not delegate that task to JMC — Whether unanimous vote taken at AGM could not authorise JMB or JMC to do any task not sanctioned by statute

The appellant owned a residential unit in a condominium (Menara Rajawali) which also housed retail shops and car parks. The first appellant ('the JMB') was the joint management body that, inter alia, maintained and managed the property while the second appellant owned all the car park parcels in the building. The issue in this appeal was whether the Strata Management Act 2013 ('the SMA') allowed a JMB to impose different rates for different types of parcels in a stratified building for the purpose of calculating the maintenance charges payable by parcel owners. In the instant case, the first annual general meeting ('the AGM') of the JMB unanimously passed a resolution to authorise its executive arm ('the JMC') to fix different maintenance charge rates for the different types of parcels within the condominium subject to the rates not exceeding RM3.26 per share unit for the residential and retail shop parcels and RM1.68 per share unit for the car park parcels. The JMC proceeded to fix a rate of RM2.80 per share unit for the residential and retail shop parcels and RM1.68 per share unit for the car park parcels. The appellant filed an originating summons ('the OS') against the respondents to declare both the JMB's resolution and the JMC's fixing of the aforesaid rates as null and void for being ultra vires the SMA. The appellant contended that the imposition of the different rates unfairly favoured the car park parcels and discriminated against the residential and retail shop parcels. The High Court dismissed the OS, holding that nothing in the SMA prevented the JMB or JMC from fixing different maintenance charge rates for different types of parcels especially when

the AGM has unanimously approved it. The court further found that the amount of maintenance charge payable by a particular parcel was derived by multiplying the 'share units' that were allocated to a parcel (which was a fixed factor) with the rate determined by the JMB at the AGM (which was variable). The court held that the phrase 'in proportion to the allocated share units' or 'in proportion to the allocated share units of their respective parcels' occurring in ss 25(3) and 21(2) of the SMA, respectively, did not fetter the JMB's power to determine the maintenance charge rates as it deemed fit. In the instant appeal against the High Court's decision, the appellant argued that since the SMA did not specifically allow a JMB to fix different maintenance charge rates for different types of parcels (unlike a Management Corporation, which was allowed to do so) it could only impose a common rate for all types of parcels. The appellant also said that under the SMA the JMB itself had to determine the maintenance charge rate and it could not delegate that function to the JMC.

Held, unanimously allowing the appeal; setting aside the High Court's decision and the JMB's resolution and the JMC's decision on the rates and granting the prayers in the OS:

(1) On a proper construction of ss 21 and 25 of the SMA, the JMB was required to determine and fix only a single rate of maintenance charge applicable to all types of parcels in proportion to their allocated share units. The rate per share unit would be the same and the owners of different types of parcels would then pay maintenance charges in proportion to the share units allocated to their respective parcels. The JMB's resolution to fix different rates for different types of parcels did not conform to ss 21 and 25 of the SMA (see paras 25 & 27).

(2) The criteria for determining the allotment of share units was based on weight differentiation for share units as illustrated by the three weightage factors WF1, WF2 and WF3 in the First Schedule of the SMA. Since the car park unit (whole floor parcel) already enjoyed a 40% discount by way of the calculation of its share units pursuant to the WF formula, it stood to enjoy a further 42% discount if the lower maintenance charge rate for car park units was imposed. This additional discount would run counter to the legislative framework which was intended to avoid inequitable, unfair and discriminatory practice in determining maintenance charge rates. The imposition of two different maintenance charge rates for different types of parcels was incompatible with the meaning of 'in proportion' in ss 21 and 25 of the SMA since there was no comparative relation, ratio or harmony between the two different rates and the different allocated share units of each parcel (see paras 24–25).

(3) There was no provision in the SMA or the Strata Titles Act 1985 ('the STA 1985') which empowered the JMB to fix different maintenance charge rates for different types of parcels. In contrast, such a power was

expressly conferred on a Management Corporation in certain situations. If Parliament had intended the JMB to have the power to fix different rates, that intention would have been clearly reflected in the SMA and because there was no such provision it must have been Parliament's intention and wisdom not to confer such power on the JMB (see para 38).

(4) No provision in either the SMA or the STA 1985 conferred power on the JMC to decide on the rates, or, for that matter, permitted the JMB to delegate its decision-making duty under s 21(1)(b) of the SMA to the JMC. The duty to make a decision was imposed on the JMB and that duty was non-delegable. The decision to determine the maintenance charges was made by the JMB at a general meeting attended by the developer and purchasers; it was a collective decision. The decision to fix the maintenance charges must be made by the JMB. The JMB's resolution to delegate its duty to the JMC exceeded the JMB's statutory powers. As such, the mandate given to the JMC in the instant case was invalid and null and void (see para 37).

(5) The fact that the JMB's resolution was carried by a unanimous vote at the AGM did not make it legal and valid for the JMB and JMC to fix the different maintenance charge rates. The JMB as a body corporate under statute could only determine charges which were mandated under the SMA. It would be ultra vires the SMA for the JMB and the JMC to fix and impose different rates not sanctioned by statute. The JMB did not have any inherent power to do so nor could it arrogate to itself such power even if approval was obtained in a unanimous resolution at the AGM (see para 40).

(6) As a creature of statute, the JMB's powers were circumscribed by the SMA. What the SMA did not expressly or impliedly authorise had to be taken to be prohibited. The JMB's powers could extend no further than what was expressly stated in the SMA or was necessarily and properly required for carrying into effect the purpose of the JMB's establishment or which might be fairly be regarded as incidental to, or consequential upon, those things which the Legislature had authorised (see para 36).

[Bahasa Malaysia summary

Perayu memiliki unit kediaman di dalam sebuah kondominium (Menara Rajawali) yang juga menempatkan kedai runcit dan tempat letak kereta. Perayu pertama ('JMB') adalah badan pengurusan bersama yang, antara lain, menjaga dan menguruskan hartanah tersebut sementara perayu kedua memiliki kesemua petak tempat letak kereta di dalam bangunan tersebut. Isu dalam rayuan semasa adalah sama ada Akta Pengurusan Strata 2013 ('APS') membenarkan JMB untuk mengenakan kadar yang berbeza untuk setiap jenis parsel yang berbeza di bangunan berstrata untuk tujuan mengira caj

penyelenggaraan yang harus dibayar oleh pemilik parsel. Dalam kes semasa, mesyuarat agung tahunan pertama ('AGM') JMB sebulat suara meluluskan resolusi untuk memberi kuasa kepada pihak eksekutifnya ('JMC') untuk menetapkan kadar caj penyelenggaraan yang berbeza untuk pelbagai jenis parsel yang berbeza dalam kondominium tertakluk kepada kadar tidak melebihi RM3.26 seunit bagi parsel kediaman dan kedai runcit dan RM1.68 seunit bagi parsel tempat letak kereta. JMC seterusnya menetapkan kadar RM2.80 bagi setiap unit kongsi parsel kediaman dan kedai runcit dan RM1.68 bagi setiap unit kongsi untuk parsel tempat letak kereta. Perayu memfailkan saman pemula ('SP tersebut') terhadap responden untuk memerintahkan resolusi JMB dan penetapan kadar JMC yang dinyatakan di atas sebagai terbatal dan tidak sah kerana ultra vires terhadap APS. Perayu berpendapat bahawa pengenaan kadar yang berlainan secara tidak adil telah menguntungkan parsel tempat letak kereta dan mendiskriminasi parsel kediaman dan kedai runcit. Mahkamah Tinggi menolak SP tersebut, dengan menyatakan bahawa tidak ada apa-apa perkara di dalam APS yang menghalang JMB atau JMC daripada menetapkan kadar caj penyelenggaraan yang berlainan untuk pelbagai jenis parsel terutamanya apabila AGM telah meluluskannya sebulat suara. Mahkamah selanjutnya mendapati bahawa jumlah caj penyelenggaraan yang perlu dibayar oleh parsel tertentu diperoleh dengan mengalikan 'unit kongsi' yang diberikan bagi setiap parsel (yang merupakan faktor tetap) dengan kadar yang ditetapkan oleh JMB pada AGM (yang merupakan pemboleh ubah). Mahkamah memutuskan bahawa ungkapan 'berkadaran dengan unit kongsi yang diperuntukkan' atau 'sebanding dengan unit konsi yang diperuntukkan pada setiap parsel masing-masing' yang dibawah ss 25(3) dan 21(2) APS, masing-masing, tidak mengganggu kuasa JMB untuk menentukan kadar caj penyelenggaraan yang difikirkan sesuai. Dalam rayuan semasa terhadap keputusan Mahkamah Tinggi, perayu berpendapat bahawa oleh kerana APS tidak secara khusus membenarkan JMB menetapkan kadar caj penyelenggaraan yang berbeza untuk pelbagai jenis parsel (tidak seperti perbadanan pengurusan, yang mana dibenarkan), ia hanya boleh mengenakan kadar yang sama untuk semua jenis parsel. Perayu juga mengatakan bahawa di bawah APM, JMB sendiri harus menentukan kadar caj penyelenggaraan dan tidak seharusnya menyerahkan fungsi tersebut kepada JMC.

Diputuskan, sebulat suara membenarkan rayuan; mengetepikan keputusan Mahkamah Tinggi, dan resolusi JMB dan keputusan JMC mengenai kadar dan membenarkan permohonan dalam SP:

(1) Berdasarkan kepada konstruksi tepat ss 21 dan 25 APS, JMB diminta untuk menentukan dan menetapkan hanya satu kadar caj penyelenggaraan yang dikenakan untuk semua jenis parsel bersesuaian dengan unit kongsi yang diperuntukkan. Kadar setiap unit kongsi seharusnya adalah sama dan pemilik pelbagai jenis parsel kemudian akan

membayar caj penyelenggaraan bersesuaian dengan unit kongsi yang diperuntukkan bagi setiap unit kongsi masing-masing. Resolusi JMB untuk mengenakan kadar yang berbeza untuk pelbagai jenis parsel tidak bersesuaian dengan ss 21 dan 25 APS (lihat perenggan 25 & 27).

(2) Kriteria bagi menentukan pembahagian unit kongsi adalah berdasarkan kepada perbezaan pemberat untuk unit kongsi seperti yang digambarkan oleh tiga faktor pemberat WF1, WF2 dan WF3 dalam Jadual Pertama APS. Oleh kerana unit tempat letak kereta (keseluruhan lantai parsel) telah menikmati diskaun 40% melalui pengiraan unit kongsinya mengikut formula WF, ianya akan seterusnya menikmati potongan 42% lagi sekiranya kadar caj penyelenggaraan lebih rendah untuk unit tempat letak kereta dikenakan. Potongan tambahan ini akan bertentangan dengan kerangka perundangan yang bertujuan untuk menghindari praktis yang tidak adil, tidak saksama dan diskriminatif dalam menentukan kadar caj penyelenggaraan. Pengenaan dua kadar caj penyelenggaraan yang berlainan untuk pelbagai jenis parsel tidak bersesuaian dengan makna 'berkadaran' dalam ss 21 dan 25 APS kerana tidak ada kaitan perbandingan, nisbah atau harmoni antara dua kadar yang berlainan dan peruntukan yang berlainan bagi setiap unit kongsi parsel (lihat perenggan 24–25).

(3) Tidak ada peruntukan dalam APS atau Akta Hakmilik Strata 1985 ('AHS 1985') yang memberi kuasa kepada JMB untuk menetapkan kadar caj penyelenggaraan yang berbeza untuk berbagai jenis parsel. Sebaliknya, kuasa seperti itu secara tersurat diberikan kepada Perbadanan Pengurusan dalam situasi tertentu. Sekiranya Parlimen berniat untuk JMB mempunyai kuasa untuk menetapkan kadar yang berbeza, niat itu akan jelas tercermin dalam APS dan oleh kerana tidak ada peruntukan tersebut, maka niat dan akal fikiran Parlimen untuk tidak memberikan kuasa tersebut kepada JMB (lihat perenggan 38).

(4) Tidak ada peruntukan juga dalam APS atau AHS 1985 yang memberikan kuasa kepada JMC untuk memutuskan kadar, atau, dalam hal tersebut, memberikan kebenaran kepada JMB untuk menyerahkan tugas membuat keputusan di bawah s 21(1)(b) APS kepada JMC. Kewajipan untuk membuat keputusan dikenakan kepada JMB dan tugas itu tidak boleh diserahkan. Keputusan untuk menentukan caj penyelenggaraan dibuat oleh JMB pada mesyuarat agung yang dihadiri oleh pemaju dan pembeli; ianya adalah keputusan secara bersama. Keputusan untuk menetapkan caj penyelenggaraan haruslah dibuat oleh JMB. Resolusi JMB untuk menyerahkan tugasnya kepada JMC melebihi kuasa statutori JMB. Oleh itu, mandat yang diberikan kepada JMC dalam kes semasa adalah tidak sah dan terbatal (lihat perenggan 37).

(5) Fakta bahawa resolusi JMB dicapai dengan suara bulat di AGM tidak menjadikannya sah dan terpakai bagi JMB dan JMC untuk menetapkan

kadar caj penyelenggaraan yang berbeza. JMB sebagai badan korporat di bawah undang-undang hanya dapat menentukan caj yang diberi mandat di bawah APS. Ianya akan menjadi ultra vires APS bagi JMB dan JMC untuk menetapkan dan mengenakan kadar berbeza yang tidak diperuntukkan oleh undang-undang. JMB tidak mempunyai kuasa semulajadi untuk melaksanakannya dan juga tidak boleh memberikannya sendiri kuasa walaupun persetujuan telah diperoleh melalui resolusi sebulat suara di AGM (lihat perenggan 40).

(6) Sebagai pihak di bawah undang-undang, kuasa JMB dibatasi oleh APS. Apa yang tidak diakui oleh APS secara tersurat atau tersirat haruslah dilarang. Kuasa JMB tidak dapat diluaskan lebih dari apa yang dinyatakan secara tersurat dalam APS atau diperlukan dan sewajarnya diperlukan untuk melaksanakan tujuan penubuhan JMB atau yang secara wajar disengajakan, atau secara akibatnya, pada perkara-perkara yang mana badan perundangan telah benarkan (lihat perenggan 36).]

Cases referred to

Andrew Lee Siew Ling v United Overseas Bank (M) Bhd [2013] 1 MLJ 449, FC (refd)

Ekuiti Setegap Sdn Bhd v Plaza 393 Management Corp (established under The Strata Titles Act 1985) [2018] 4 MLJ 284; [2019] 2 CLJ 592, CA (refd)

Hari Bhadur Ghale v Public Prosecutor [2012] 6 MLJ 597, FC (refd)

Kee Keng Mow v Setapak Garden Estate Ltd [1975] 2 MLJ 102; [1975] 1 LNS 69 (refd)

Lai Yak Kee v Pembinaan Alam Cemerlang Sdn Bhd [2012] MLJU 1802; [2012] 1 LNS 1464, FC (refd)

Magor and St Mellons Rural District Council v Newport Corporation [1951] 2 All ER 839; [1952] AC 189, HL (refd)

Malaysia Shipyard and Engineering Sdn Bhd v Bank Kerjasama Rakyat Malaysia Bhd [1985] 2 MLJ 359; [1985] CLJ Rep 206, SC (refd)

Perbadanan Pengurusan Endah Parade v Magnificient Diagraph Sdn Bhd [2013] 6 MLJ 343; [2014] 5 CLJ 881, CA (refd)

Public Prosecutor v Tan Tatt Eek & other appeals [2005] 2 MLJ 685; [2005] 1 CLJ 713, FC (refd)

Sri Bangunan Sdn Bhd v Majlis Perbandaran Pulau Pinang & Anor [2007] 6 MLJ 581, FC (refd)

Tan Eng Choon v Tay Boon See [1980] 2 MLJ 290; [1980] 1 LNS 74 (refd)

Legislation referred to

Housing Development (Control and Licensing) Regulations 1989

Interpretation Acts 1948 and 1967 s 17A

Strata Titles Act 1985 ss 4, 36(a), (b), (c), 39(1), 45, 63, 66

Strata Management (Maintenance and Management) Regulations 2015 reg 13, Form 5A

A Strata Management Act 2013 ss 7(2), 8(1), 15, 17, 19, 21, 21(1), (1)(b), (2), 22, 22(2), 25, 59(1), 60(3)(b), First Schedule, sub-paras 4(3), 5(4), Second Schedule

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Vernon Ong JCA:

C INTRODUCTION

[1] Can a joint management body ('JMB') impose different rates of maintenance charges for different types of parcels in a condominium development? That was the issue which presented itself at the High Court
D concerning the imposition of maintenance charges in a mixed condominium development comprising of residential, retail shop and car park parcels.

[2] In this case there are no facts in issue to be determined. However, one question of law emerges clearly and it is this: whether the Strata Management
E Act 2013 ('the SMA 2013') limits the power of the JMB to determine different rates of maintenance charges for different types of parcels?

THE SALIENT FACTS

F **[3]** The mixed condominium development in question is known as Menara Rajawali. The plaintiff is the owner of a residential parcel. The JMB is the first defendant. The second defendant is the owner of all the car park parcels in Menara Rajawali.

G **[4]** The dispute can be traced back to the first annual general meeting of the JMB on 25 June 2016 where it was unanimously resolved, inter alia, that mandate be given to the joint management committee ('JMC') to fix the maintenance charges for:

H (a) residential parcels and retail shop parcels at a rate not exceeding RM3.26 per share unit; and

(b) car park parcels at a rate not exceeding RM1.68 per share unit ('JMB's resolution').

I **[5]** Pursuant thereto, the JMC fixed the maintenance charges for:

(a) residential and retail shop parcels at a rate of RM2.80 per share unit; and

(b) car park parcels at a rate of RM1.68 per share unit ('JMC's decision').

[6] On 26 January 2018, the plaintiff filed an action in the High Court seeking declarations that both the JMB's resolution and the JMC's decision are null and void ab initio. *The plaintiff contended, inter alia, that the different rates of maintenance charges discriminated against retail shop and residential parcels and were unlawful in that it went beyond the JMB/JMC's legal power or authority.* The High Court dismissed the plaintiff's action. This is the plaintiff's appeal. In this judgment the parties shall be described as they were in the court below.

FINDINGS OF THE HIGH COURT

[7] The key findings of the learned judge are as follows:

(a) the words 'share units' in the SMA 2013 is what would ordinarily be described as the 'multiplier' for purposes of determining the maintenance charge payable, whereas the rate payable as determined by the JMB via the JMC is the 'multiplicand'. The share unit or multiplier is fixed, whereas the multiplicand or rate can vary depending on what the JMB decides at the AGM;

(b) the phrase 'in proportion to the allocated share units' of each parcel (per s 25(3)) or 'in proportion to the allocated share units of their respective parcels' (per s 21(2)) cannot be read or construed as fettering the ambit of the JMB's power (as approved by the AGM) to determine such rate of maintenance fee or sinking fund contribution as is deemed appropriate in the circumstances;

(c) there is nothing in the SMA 2013 which prevents the JMB/JMC from fixing different rates of charges for different types or categories of parcels in the strata project, as long as this is approved by the AGM;

(d) it is for the AGM comprising of the owners to decide whether the rate for maintenance charges for all types of parcels should be uniform or otherwise; and

(e) as the approval was given by a unanimous resolution at the first AGM, it was perfectly valid and legal for the JMB to fix differing rates of charges for the residential/retail parcels and car park parcels.

SUBMISSION OF PARTIES

[8] Five main points were canvassed by learned counsel for the plaintiff. The first is that the JMB's resolution and the JMC's decision are outside of their powers conferred by the SMA 2013, and therefore are ultra vires the SMA 2013, null and void ab initio. The words 'in proportion' appearing in ss 21 and 25 clearly requires the JMB/JMC to determine and fix only one rate to be applied to all types of parcels (*Kee Keng Mow v Setapak Garden Estate Ltd* [1975] 2 MLJ 102; [1975] 1 LNS 69; *Tan Eng Choon v Tay Boon See* [1980]

2 MLJ 290; [1980] 1 LNS 74). The JMB being a creature of statute cannot do anything that is not permitted by the statute under which it is incorporated (*Malaysia Shipyard and Engineering Sdn Bhd v Bank Kerjasama Rakyat Malaysia Bhd* [1985] 2 MLJ 359; [1985] CLJ Rep 206 (SC); (*Ekuiti Setegap Sdn Bhd v Plaza 393 Management Corp (established under The Strata Titles Act 1985)* [2018] 4 MLJ 284; [2019] 2 CLJ 592 (CA)).

[9] The second point is that the SMA 2013 only allows a management corporation ('MC') to determine different rates of charges for different parcels. In contrast, s 21 does not permit the JMB to determine different rates for different parcels. That power cannot be implied by the JMB in the absence of such express provision.

[10] The third point relates to the legislative framework for the calculation of share units. The SMA 2013 provides weight differentiation, which acts as discounts, for the calculation of the share units of each parcel. Under the First Schedule, a car park (whole floor parcel) owner already enjoys a discounted weightage factor compared to a residential or retail parcel owner. As the rate per share unit for the respective parcels are different, the owners of residential, car park and retail parcels will be paying different maintenance charges which are not in proportion to the allocated share units.

[11] The fourth point is that the one rate requirement in the SMA 2013 is consistent with the provisions of the Housing Development (Control and Licensing) Regulations 1989 ('the HDR') which prescribes the maintenance charges which is calculated by dividing the total expenses with the total number of proposed share units assigned to all parcels.

[12] The fifth point for the plaintiff is that no proper implication within the express words of ss 21 and 25 and the First Schedule of the SMA 2013 can arise to introduce the JMB/JMC's discretion to determine different maintenance charges rates for different categories of parcels. In deciding that there is nothing in the SMA 2013 which prevents the JMB/JMC from fixing different rates of charges for different types of units so long as this is approved by the AGM, the learned judge erroneously filled in the purported gaps in the SMA 2013 and effectively exceeded the limit of his duty and power in interpreting the SMA in that manner (*Hari Bhadur Ghale v Public Prosecutor* [2012] 6 MLJ 597 (FC); *Lai Yak Kee v Pembinaan Alam Cemerlang Sdn Bhd* [2012] MLJU 1802; [2012] 1 LNS 1464 (FC); *Magor and St Mellons Rural District Council v Newport Corporation* [1951] 2 All ER 839; [1952] AC 189).

[13] The remaining subsidiary points taken by the plaintiff may be summarised as follows. One, the fact that the resolution was passed at the first AGM is immaterial as the JMB's resolution and the JMC's decision are still

ultra vires the SMA and therefore null and void ab initio (*Ekuiti Setegap*). Two, as a parcel owner's number of votes corresponds with the number of share units the amount of maintenance charges to be paid should be in proportion to the number of share units allocated to a parcel owner. In this case, the owner of the car park possesses a substantially high number of share units (and voting power) but enjoy a significantly lower maintenance charges rate of RM1.68 per share unit. This is compared to owners of much smaller residential and retail parcels who have to pay a higher rate of RM2.80 per share unit. Three, permitting the JMB/JMC to determine different maintenance charges rates for different parcels is open to abuse. In this case, the JMB/JMC comprised of four committee members of which three are shareholder/directors of the second defendant, the car park owner. Conveniently, the JMC determined the maintenance charges rate for the car park parcels shall be significantly lower than the rate for residential and retail parcels. The final point was that the SMA 2013 requires the JMB to determine the specific and final maintenance charges rate for all parcels (s 19 of the SMA 2013). The SMA 2013 does not confer any power on the JMB to fix a ceiling rate or to delegate the determination of the rates to the JMC (ss 21 and 25 SMA 2013; reg 13 and Form 5A of the Strata Management (Maintenance and Management) Regulations 2015; *Perbadanan Pengurusan Endah Parade v Magnificient Diagraph Sdn Bhd* [2013] 6 MLJ 343; [2014] 5 CLJ 881).

[14] In his short reply, learned counsel for the first and second defendants argued that the rates of maintenance charges were determined in accordance with ss 21 and 25 of the SMA 2013. There is nothing in the SMA 2013 to fetter the JMB's discretion to apply only one rate for all types of parcels. The plaintiff's argument which is premised on proportionality is without merit. The weightage factor is not the sole factor in determining the rate of maintenance charges. The JMC had in fact decided to retain and charge the full ceiling rate payable by the car park owner while charging below the ceiling rate payable by the residential and retail parcels. The learned judge was correct to hold that the car park facility is a service to the owners, and that the car park enjoys no maintenance services like security and cleaning.

DECISION

[15] The main thrust of the plaintiff's argument is twofold. One, the second defendant is enjoying a double discount on his share of contribution of the maintenance charges. This argument is premised on the ground that the allocation of share units to every parcel owner has already taken into account the types of parcels, frequency of usage and general maintenance of the common property, whole floor parcel including or excluding area of vertical transportation core, and accessory parcels inside or outside building. Since the share value of the second defendant has already factored in the weightages, fixing a lower rate of maintenance charges for the car park units as opposed to

A a standard rate for all types of parcels would in effect be giving the second defendant a double discount. Two, the provisions of the SMA 2013 cannot be read as giving the JMB and the JMC the power to determine different rates of maintenance charges for different parcels.

B *First point*

[16] In this instance, the share units have already been allocated for all the parcels in Menara Rajawali. As the notion of 'share units' is significant in this appeal, we think it is necessary to have a proper appreciation of the concept of C 'share unit' in the context of a strata development like Menara Rajawali.

What are 'share units'?

D **[17]** The notion of 'share units' is a feature peculiar to strata developments. It is based on the concept of a single, easily applied, method of determining each parcel owner's: (a) voting rights; (b) share in the common property; (c) contribution to maintenance and administrative expenses; and (d) proportional liability for the debts of the JMB or MC, as the case may be E (ss 36(a), (b), (c), 45, 63 and 66 of the STA 1985).

[18] The total number of share units allocated to a parcel is that parcel's *share value*. Each parcel owner shall have one vote on a show of hands at a general meeting of the JMB or MC. However, on a poll, each parcel owner shall have F such number of votes as that corresponding with the number of share units (sub-s 22(2); Second Schedule of the SMA 2013). In other words, parcel owners with higher share value will enjoy more voting power on a voting on a poll. On the flip side, the higher share value will also translate into a liability to pay higher aggregate maintenance charges and contributions to the sinking G fund.

Meaning of 'share units' under the STA 1985 and the SMA 2013

H **[19]** The words 'share units' mean the share units determined for that parcel shown in the schedule of parcel owners: s 4 of the STA 1985. Put simply, the share units of a parcel are the area of that parcel multiplied by the weightage factor for that type of parcel and the weightage factor for the entire floor parcel. If there is any accessory parcel, the area of the accessory parcel is multiplied by I a weightage factor for that accessory parcel. If there is more than one accessory parcel, the formula for calculation shall be applicable to each accessory parcel and it shall then be added accordingly. Both the value of the parcel and accessory parcel are then added to determine the total share units for each parcel.

[20] Share units are calculated according to the formula under the First Schedule of the SMA 2013: sub-s 8(1) of the SMA 2013. As will become clear the calculation of allocated share units takes into account three weightage factors: WF1, WF2 and WF3. The formula for the computation of allocated share units is as follows:

Allocated share units of a parcel	=	(area of parcel x WF1 x WF2)	+	(area of accessory parcel x WF3)

[21] The allocated weightage factors are based on different sets of criteria. In the case of the weightage factor WF1, Table 1 makes three main differentiations: (i) the different types of parcels; (ii) between parcels with or without air-conditioning to the common areas or corridors, lobbies and foyers; and (iii) between parcels having benefit or no benefit of common lift/escalator facility. The following examples are illustrative of the general scheme of the First Schedule:

(a) the weightage factor of an apartment with air-conditioning to common areas of corridors, lobbies and foyers having benefit of common lift/escalator facility is 1.30; whereas the weightage factor for a similar apartment having no benefit of common lift/escalator facility drops to 1.15;

(b) an apartment without air-conditioning having benefit of common lift/escalator facility is accorded a factor of 1.00; whereas the weightage factor for a similar apartment having no benefit of common lift/escalator facility is only 0.85;

(c) a car park (whole floor area) with air-conditioning to common areas of corridors, lobbies and foyers having benefit of common lift/escalator facility is 0.85; whereas the weightage factor for a similar car park having no benefit of common lift/escalator facility drops to 0.75; and

(d) a car park (whole floor area) without air-conditioning having benefit of common lift/escalator facility is accorded a factor of 0.75; whereas the weightage factor for a similar car park having no benefit of common lift/escalator facility is only 0.65.

[22] Weightage factor WF2 include a whole floor or a block of contiguous whole floors of car parks in a complex. Table 2 provides a weightage factor of 0.85 for a car park (whole floor area) excluding area of vertical transportation (lifts/escalators) as compared to 0.80 for a car park including area of vertical transportation. Weightage factor WF3 allocates a factor of 0.25 for outside building and 0.5 for within building.

[23] The allocation of weightage factors for whole floor parcel (WF2) and accessory parcel (WF3) in particular, is premised on equitable considerations.

This is reflected in sub-para 4(3) of the First Schedule in relation to WF2 which states that 'In order to be equitable to other parcels which form the majority and comprise only net lettable areas, a whole floor must be adjusted to its equivalent net lettable area by taking into account its large circulation area or vertical transportation core in the whole floor parcel'. And in relation to WF3, sub-para 5(4) of the First Schedule states that 'In order to be equitable before incorporating into the allocated share units of a parcel, the area of an accessory parcel must be adjusted to reflect that it is non-habitable and generally of lower construction cost. (Emphasis added.)

[24] Accordingly, the criteria in determining the allotment of share units is based on weight differentiation for share units as illustrated by the three weightage factors WF1, WF2 and WF3. In addition to the above, ss 21 and 25 of the SMA 2013 requires the JMB to determine the maintenance charges 'in proportion to the allocated share units of each parcel'. The word 'proportion' is defined as 'to adjust in proper proportion to something else as to size, quantity, number etc.; to make proportionate' (*Oxford English Dictionary*, Vol VIII). The words 'in proportion' was explained in *Tan Eng Choon v Tay Boon See* [1980] 2 MLJ 290, 2910 as 'A thing is said to be in proportion to another when there is a comparative relationship or ratio between the two. The relationship is such that any increase or decrease in one will involve a relative adjustment of the other so as to maintain the existing harmony between them'.

[25] In the light of the fact that three weightage factors have been applied in the calculation of share units for car park parcels and which calculation is premised on equitable considerations, it would appear that the JMB is only empowered to fix one rate which is applicable to all types of parcels. If that course is adopted, then the owners of different type of parcels will be paying maintenance charges in proportion to the allocated share units of their respective parcels because the rate per share unit is the same. We are therefore inclined to agree with the plaintiff's argument that since the car park unit (whole floor parcel) is already enjoying a 40% discount by way of the calculation of its share units pursuant to the WF formula in the First Schedule, it will enjoy a further 42% discount given the lower rate of maintenance charges for the car park units. This additional discount would, in our view, run counter to the legislative framework which is intended to avoid inequitable, unfair and discriminatory practice in determining maintenance and maintenance charges rate. Therefore, the imposition of two different rates of maintenance charges for different types of parcels is incompatible with the meaning of 'in proportion' in ss 21 and 25 of the SMA 2013 since there is no comparative relation, ratio or harmony between the two different rates and the different allocated share units of each parcel. In describing the share unit as the 'multiplier' and the rate as the 'multiplicand', the learned judge did not appear to have given proper effect to the phrase 'in proportion to the allocated share

units' of sub-s 21(2) and sub-s 25(3) of the SMA 2013. Accordingly, we do not think that the description of the share unit as the 'multiplier' and the rate as the 'multiplicand' is apposite.

[26] It is also important to apprehend the general legislative scheme of the SMA 2013 and the STA 1985 which governs all strata development projects. Both statutes set out a comprehensive, transparent, equitable and uniform regime to allocate and calculate the share units of each parcel; which must be filed with the Commissioner of Buildings and approved by the Director of Lands and Mines. It appears that the learned judge did not appreciate that different weightage factors between the types of parcels have been taken into account in the First Schedule of the SMA 2013.

[27] We therefore take the view that on a proper construction of the said sections, the JMB is required to determine and fix only a single rate of maintenance charges to be applied to all types of parcels in proportion to the allocated share units. Accordingly, we do not think that the JMB's resolution in fixing different rates for different types of parcels is in conformity with ss 21 and 25 of the SMA 2013.

Second point

[28] We will now consider the question of whether the JMB's resolution and the JMC's decision is ultra vires the SMA 2013 and the STA 1985. This is a question of law which turns on the proper construction of ss 21 and 25 of the SMA 2013. In this case the JMC's decision was made pursuant to the JMB's resolution; which resolution, it will be recalled, gave a mandate to the JMC to fix the maintenance charges for different types of parcels subject to certain ceiling rates. The underlying reason for the learned judge's decision is premised on: (i) there was nothing in the SMA 2013 limiting the power of the JMB or JMC from fixing different rates of maintenance charges; (ii) it was a matter for the owners to decide at the AGM of the JMB; and (iii) the SMA 2013 did not proscribe any differentiation of the maintenance charges.

[29] It is important to comprehend the statutory role of the JMB against the backdrop of three stages of management in a strata development project. The initial period of management after the completion of a strata development is undertaken by the developer, followed by the JMB and the management is ultimately taken over by the MC. As such, the JMB plays a transitional role in the management of the building and common property in a strata development.

A Developer's management period

[30] Immediately after the delivery of vacant possession of a parcel to a purchaser in a strata development project the developer is required to maintain and manage the parcels and common property; this is known as the developer's management period: sub-s 7(2) of the SMA 2013.

Joint management body

[31] A JMB is established at the first AGM of the JMB which must be convened within 12 months from the date of delivery of vacant possession of a parcel to a purchaser: s 17 of the SMA 2013. Once a JMB is established, the developer is required to hand over to the JMB the monies remaining in the maintenance account and the sinking fund account and various other matters pursuant to s 15 of the SMA 2013. A JMB is a body corporate and it is comprised of the developer and the purchasers. A JMB is under a duty to, inter alia: (i) maintain and manage the building or land intended for subdivision and the common property; and (ii) determine and impose the maintenance charges and the contribution to the sinking fund: sub-s 21(1) of the SMA 2013. In this connection, a JMB is empowered to, inter alia: (i) collect the maintenance charges and contribution to the sinking fund; and (ii) to do all things reasonably necessary for the performance of its duties.

[32] A JMC is the executive arm of the JMB and it is elected by the JMB at a general meeting. The JMC carries out and conducts the JMB's duties and business subject to any restriction imposed or direction given by the JMB: s 22 of the SMA 2013. A JMC is also a creature of statute and as such its powers are: (i) those expressly provided under the SMA 2013, and more particularly; and (ii) those which may reasonably be implied as necessary and proper for the purpose of carrying out its duties, and the limit of its implied power is the object of its formation.

Management corporation

[33] A MC is established after the opening of a book of the strata register; ie to say, after the documents of strata titles have been issued and a register of strata titles have been prepared by the Registrar of Titles: sub-s 39(1) of the STA 1985. The MC is required to, inter alia, maintain and manage the subdivided building and common property, determine, impose and collect the maintenance charges and the contribution to the sinking fund, prepare and maintain a strata roll for the subdivided buildings: s 59(1) of the SMA 2013. The JMB is dissolved within three months from the date of the MC's first AGM; the JMB is also required to conduct a handing over to the MC within a period of one month.

Statutory interpretation

[34] The question of whether the SMA 2013 limits the JMB's power to fix different rates is ultimately a matter of statutory interpretation. The rules governing statutory interpretation are quite settled. In construing a statute effect must be given to the object and intent of the legislature in enacting the statute. Accordingly, the duty of the court is limited to interpreting the words used by the Legislature and to give effect to the words used by it. The court will not read words into a statute unless clear reason for it is to be found in the statute itself (*Sri Bangunan Sdn Bhd v Majlis Perbandaran Pulau Pinang & Anor* [2007] 6 MLJ 581 (FC)). Therefore, in construing any statute, the court will firstly, look at the words in the legislation and apply the plain and ordinary meaning of the words in the statute. If there is any ambiguity to the words used, the court is duly bound to accept it even if it may lead to mischief. Where the language used is clear and unambiguous, it is not the function of the court to re-write the statute in a way which it considers reasonable. But if the words employed are not clear, then the court may adopt the purposive approach in construing the meaning of the words used (see *Public Prosecutor v Tan Tatt Eek & other appeals* [2005] 2 MLJ 685; [2005] 1 CLJ 713). In *Andrew Lee Siew Ling v United Overseas Bank (M) Bhd* [2013] 1 MLJ 449 (FC), the Federal Court enunciated on the application of s 17A of the Interpretation Acts 1948 and 1967 which provides for a purposive approach in the interpretation of statutes.

[35] Therefore, where the words of a statute are unambiguous, plain and clear, they must be given their natural and ordinary meaning. The statute should be construed as a whole and the words used in a section must be given their plain grammatical meaning (*Hari Bhadur Gale v PP*). It is not the province of the court to add or subtract any word; the duty of the court is limited to interpreting the words used by the legislature and it has no power to fill in the gaps disclosed (*Lai Yak Kee v Pembinaan Alam Cemerlang Sdn Bhd*). Even if the words in a statute may be ambiguous, the power and duty of the court 'to travel outside them on a voyage of discovery are strictly limited' (*Magor & St Mellons Rural District Council & Newport Corporation*).

[36] As a creature of statute, the powers of the JMB are limited and circumscribed by the SMA 2013 which regulate it, and extend no further than is expressly stated therein, or is necessarily and properly required for carrying into effect the purposes of its establishment, or may be fairly regarded as incidental to, or consequential upon, those things which the legislature has authorised. What the SMA 2013 does not expressly or impliedly authorise is to be taken to be prohibited.

A **[37]** Under the clear statutory provisions, the JMB is the decision making body, whereas the JMC is the executive arm responsible for the implementation of the JMB's decisions and performance of the JMB's duties. There is no provision in either the SMA 2013 or the STA 1985 which confers the JMC with power to decide on the rates; or for that matter, which permits B the JMB to delegate its decision-making duty under sub-s 21(1)(b) of the SMA 2013 to the JMC. We do not think that in this case such powers can be implied. In our view the duty to make the decision is a duty imposed on the JMB and that duty is non-delegable. We say this because the decision to determine the maintenance charges is made by the JMB at a general meeting attended by the C developer and purchasers; it is a collective decision. In short, the decision to fix the maintenance charges must be made by the JMB. It therefore follows that the JMB's resolution to delegate its duty to the JMC is in excess of the JMB's powers under statute. As such, the mandate given to the JMC is invalid, null D and void

[38] There is also no provision under the SMA 2013 and the STA 1985 which empowers the JMB to fix different rates for different types of parcels. In contrast, such a power is expressly conferred on a MC in respect of two specific E situations: (i) parcels which are used for significantly different purposes, and (ii) provisional blocks; sub-s 60(3)(b) of the SMA 2103. Therefore, if Parliament had intended for the JMB to have the power to fix different rates of maintenance charges, that intention would have been clearly reflected in the provisions of the SMA 2013; and because there is no such provision it must F have been Parliament's presumed intention and wisdom not to confer such power on the JMB.

[39] In this connection, we think that an analogy can be drawn between the provisions in the SMA 2013 and the provisions of the HDR. Pursuant to G cl 19(3) of the prescribed sale and purchase agreement for strata development (Schedule H), the maintenance charges is based on the 'Amount per proposed share unit'; and the charges are calculated by dividing the total expenses with the total number of proposed share units allocated to all parcels (see note (iii) of Fifth Schedule in Schedule H). Under the HDR parcel owners will in fact be H paying maintenance charges 'in proportion to the allocated share units' of their respective parcels because the rate per share unit is the same.

[40] Be that as it may, does the fact that the JMB's resolution was carried by a unanimous vote make it perfectly legal and valid for the JMB and JMC to fix I and collect the different rates of the maintenance charges. The learned judge took the view that it would. However, we take a different view. The JMB as a body corporate under statute can only determine charges which are mandated under the SMA 2013. It will be ultra vires the SMA 2013 for the JMB and the JMC to fix and impose the different rates which are not sanctioned by statute.

Further, the JMB does not have the inherent power nor can it arrogate to itself such power, even if the approval was obtained in a unanimous resolution at the AGM (*Malaysia Shipyard & Engineering Sdn Bhd v Bank Kerjasama Rakyat (M) Bhd*).

[41] For the foregoing reasons, the JMB's resolution and the JMC's decision are hereby set aside for being invalid, null and void. The order of the High Court is set aside. We therefore allow prayers 1, 2, 3 and 4 of the originating summons. The appeal is allowed with costs.

Order accordingly.

Reported by Ashok Kumar